

Subject: Proposed Rule to Designate Critical Habitat for Southern Resident Killer Whales; RIN 0648-AU38
From: "Allison Butcher" <AButcher@mbaks.com>
Date: Mon, 14 Aug 2006 17:32:50 -0700
To: <orcahabitat.nwr@noaa.gov>

Puget Sound ESA Business Coalition

August 14, 2006

Chief, Protected Resources Division
National Marine Fisheries Service
1201 NE Lloyd Blvd., Suite 1100
Portland, OR 97232-1274
Email: orcahabitat.nwr@noaa.gov

Re: Proposed Rule to Designate Critical Habitat for Southern Resident Killer Whales; RIN 0648-AU38

To Whom It May Concern:

On behalf of the Puget Sound Endangered Species Act ("ESA") Business Coalition ("the Business Coalition"), I appreciate the opportunity to comment on the National Marine Fisheries Service's (NMFS) proposed critical habitat designation for Southern Resident killer whales (*Orcinus orca*). See 71 Fed. Reg. 34572 (June 15, 2006).

The Business Coalition is composed of businesses involved in transportation, development, real estate, energy, construction and the forest products industry in Puget Sound, Washington. We have been active in the salmon recovery planning process for the past seven years and meet regularly to discuss a range of ESA issues. The Business Coalition strongly supports responsible species conservation, and we support NMFS' efforts to evaluate the economic and national security impacts of its regulatory actions on the region.

At the outset, we are concerned about the timing of the draft critical habitat designation given the outstanding legal questions that have been raised about the listing of Southern Resident killer whales. Litigation filed earlier this year raises legitimate questions about the listing, namely, whether or not it is permissible for NMFS to list a distinct population segment of a subspecies of killer whales under the ESA. We believe it would be prudent for NMFS to resolve scientific and legal issues regarding the listing before proceeding with a critical habitat designation or a recovery plan.

We are also concerned about the process used to develop the Conservation Plan for Southern Resident killer whales. Given the many legal, economic and other considerations associated with this listing and the complexities of recovery planning in general, we believe NMFS should engage people with expertise to advise the agency as it develops a recovery plan. As such, we recommend that NMFS establish a recovery team for this purpose. A similar process was used for Puget Sound Chinook salmon, and as active participants in Shared Strategy, we believe the recovery planning process benefited greatly from the wide range of experts and stakeholders that participated in that effort. We believe NMFS should be consistent in the process it uses for recovery planning.

With respect to the critical habitat designation, itself, we wish to echo some of the comments and concerns being raised by other segments of the business community:

- **NMFS should consider exclusions from critical habitat areas around key infrastructure, such as ports and refineries, to avoid unintended national security or economic impacts on the region.** Ports and refinery facilities in our region supply products for a range of military and domestic uses. A critical habitat designation near these facilities could impede their operation, potentially jeopardizing their ability to provide products to the U.S. military and ultimately hurting our military readiness and preparedness. Furthermore, significant economic impacts could result in the entire region if port competitiveness were impaired, or refinery production curtailed.

To illustrate the potential economic impact of the proposed designation, the following example may prove helpful. It is well understood that reducing petroleum supplies could result in increased costs for such things as gasoline prices, air travel and transporting goods to markets. Assuming that gasoline production at Puget Sound refineries was reduced from current levels by as little as one percent on an annual basis, the economic impact to the region may exceed \$100 million if current gas prices remain unchanged.

- **We support NMFS' proposal to exclude marine areas less than 20 feet in depth from critical habitat as these areas are outside the species' current range and are not necessary for species conservation.** It is our understanding that areas less than 20 feet in depth do not contain prey or other physical or biological features that are essential for species conservation.
- **We do not believe sound constitutes a principal or biological feature that is essential for species conservation.** The National Research Council concluded in 2003 that no documenting evidence exists of ocean noise being the direct physiological agent of marine mammal death under any circumstance. Additionally, the ESA implementing regulations do not even cite sound on its list of physical and biological features essential to species conservation.

Thank you for considering these comments on the proposed critical habitat designation for Southern Resident killer whales.

Sincerely,



Allison J. Butcher, Chair
Puget Sound ESA Business Coalition
Public Affairs Manager
Master Builders Assn. of King & Snohomish Counties
335 116th Ave. SE
Bellevue, WA 98004
(425) 460-8223
abutcher@mbaks.com

<<Ocro_critical_habitat_ESABC_final.pdf>>

Ocro_critical_habitat_ESABC_final.pdf	Content-Description: Ocro_critical_habitat_ESABC_final.pdf Content-Type: application/octet-stream
--	--

Content-Encoding: base64